

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

EMOJI COMPANY GmbH,	)	
	)	
Plaintiff,	)	CASE NO. 23-cv-14925
	)	
v.	)	
THE INDIVIDUALS, CORPORATIONS,	)	
LIMITED LIABILITY COMPANIES,	)	
PARTNERSHIPS, AND	)	
UNINCORPORATED ASSOCIATIONS	)	
IDENTIFIED ON SCHEDULE A HERETO	)	
	)	
Defendants.	)	

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**DEFENDANT AMANDA CREATION MOTION TO DISSOLVE ASSET RESTRAINT  
UNDER SAME TERMS AS OTHER DEFENDANTS APPEARING AT DECEMBER 13,  
2023 HEARING AND MEMORANDUM IN SUPPORT THEREOF**

Defendant on Schedule A, Amanda Creation, Inc. (hereinafter referred to as “Amanda Creation”), hereby moves for an order seeking the same relief obtained by represented Defendants in the December 13, 2023 hearing held by this Court, against PLAINTIFF, EMOJI COMPANY Emoji, (hereinafter referred to as “Plaintiff”). As grounds, Amanda Creation states as follows:

**I. FACTS**

The Court entered a sealed temporary restraining order without notice against Amanda Creation based on facts that were either false or did not apply to Amanda Creation. [DE 25]

In summary, if the Plaintiff or anyone else wanted to do any sort of diligence regarding both the integrity and location of Amanda Creation on the Amazon platform would see that Amanda Creation is an entity operating under its own brand in Illinois. In fact, this information can be obtained by looking at the Amanda Creation Amazon store:

### **Detailed Seller Information**

**Business Name:** Amanda Creation Inc.

**Business Address:**

2272 W 95th Street

Suite 310

NAPERVILLE

IL

60564

US

[Amazon.com Seller Profile: Amanda Creation \(downloaded December 13, 2023\)](#)

Amanda Creation brands are offered under its own USPTO Registered Trademark (Compare Exhibit A: Listing at Issue and Exhibit B: USPTO Reg # 5,406,332). In the case at issue, Amanda Creation used “poop emoji” as a partial generic descriptor of an Amanda Creation product it offers that generated approximately \$55 in sales. See Exhibit A.

On or about December 1st, 2023, Amanda Creation was informed by *Amazon.com, Inc.* (“Amazon”) that it was subject of temporary restraining order [DE 25] in which Amazon was freezing all of Amanda Creation liquid assets in its possession (equaling tens of thousands of dollars and growing by the day).

Amanda Creation has reason to believe it is the victim of a SAD SCHEME initiated by Plaintiff. *See also* E. Goldman, “A SAD SCHEME OF ABUSIVE INTELLECTUAL PROPERTY LITIGATION”, *Columbia Law Review Forum*, Vol. 123, p. 183-207 (November 27, 2023) (describing the SAD Scheme generally and using the Plaintiff and the “poop emoji” as the example in point). *Id.* at p. 193-201. Amanda Creation theorizes that as Professor Goldman states, Plaintiff does a basic scan of any word “emoji” descriptor or otherwise, contained in an Amazon listing and lists that party in a Schedule A.

## **II. REASON FOR NON-PARTICIPATION IN DECEMBER 13, 2023 HEARING AND RELIEF REQUESTED**

The undersigned acts as general counsel for Amanda Creation. Upon learning of the liquid asset seizure at issue, the undersigned conducted an inquiry and wrote a letter to the Plaintiff's counsel on December 7, 2023, explaining the circumstances warranting dismissal. Based on Plaintiff counsel's lack of response to its December 7, 2023, letter, on December 11, 2023, the undersigned both called and emailed Plaintiff's counsel following up on its demand. Neither the call nor the email were returned. Since the totality of circumstances suggested that Amanda Creation would not get the relief requested from Plaintiff, on December 11, 2023, the undersigned both petitioned for admission to this District and also attempted to secure local counsel to act in the undersigned's stead for the December 13, 2023 hearing. The undersigned conferred with the Courtroom Clerk, received call in information, and listened to the December 13, 2023 hearing in its entirety. The undersigned was admitted through the U.S. District Court of the Northern District of Illinois Clerk's Office either contemporaneously with the December 13, 2023, hearing or immediately thereafter.

Although the undersigned did not actively participate in the December 13, 2023 hearing, Amanda Creation appreciates that the Court ruled to release the assets restraint requirement of the Temporary Retaining Order at issue to various US defendants who appeared. The Court also maintain the injunctive relief requested by Plaintiff from any Schedule A party selling alleged infringed goods.

Considering that the relief requested does not vary between interested Defendants and the facts are analogous if not even more favorable to Amanda Creation than its co-defendants, Amanda Creation is merely requesting the same relief as was afforded to e.g. Liberty Brands in the December 13th hearing.

### III. CONCLUSION

As the evidence and below listed Declaration indicate, Amanda Creation has sold approximately \$55 of its own AMANDA CREATION branded goods with a “poop emoji” generic descriptor. Plaintiff’s actions have resulted in Amanda Creation having tens of thousands of dollars seized with no relief in sight. Based on the analysis by Professor Goldman on an identical fact pattern with the same Plaintiff, my client has clearly not committed a Lanham Act violation. However, at the current time, Amanda Creation merely prays for the same relief granted to the Schedule A Defendants who appeared at today’s hearing.

Respectfully Submitted,

Dated: December 13, 2023

By: s/ Steven H. Weigler  
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*Attorney for Defendant Amanda Creation, Inc.*

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EMOJI COMPANY GmbH,

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THE INDIVIDUALS, CORPORATIONS,  
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Defendants.

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**DECLARATION OF AMANDA WITTENBORN IN SUPPORT OF  
MOTION**

Amanda Wittenborn, being duly sworn declares the following to be true under the penalty of perjury:

1. I am a Director of Amanda Creation, LLC (“Defendant”), and I make this Declaration in support of the Motion. Everything stated herein is true, and I would testify in conformity herewith if called to do so in person.
2. I received no notice of the hearing on the temporary injunction set by Plaintiff.
3. On December 1, 2023, I received an email from Amazon about our case recently, advising all my funds were frozen due to the TRO.
4. Amanda Creation, Inc. operates in Illinois under its own brand, Amanda Creation.
5. No owner/controller of Amanda Creation resides or operates in the People’s Republic of China.

6. Amanda Creation, Inc. openly displays both the name of the entity and other seller information on the Amazon website and has not concealed its identity. I note that apparently, Plaintiff has grouped all Defendants and claimed we are selling infringing products that violate Plaintiff's intellectual property rights in the Emoji Company GmbH Works in Illinois. Plaintiff further states we are all China or foreign based infringers. To the contrary, we are based in Illinois and sell under our own brand, AMANDA CREATION.

7. Amazon advised us that all of our funds are frozen relative to a federal court order rendered, in this case. Such seizure is in the tens of thousands of dollars, and it is increasing daily. We have no access to any funds.

8. Our Amazon store has been in existence since 2011, with an impeccable rating with over 1,674 reviews, 93% of those 5 star.

9. The total amount of revenue for AMANDA CREATION products sold using the "poop emoji" as a generic descriptor was approximately \$55.

Dated: December 13, 2023

s/Amanda Wittenborn  
Amanda Wittenborn